

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Joshua Richardson	Team: Squad #15	CCRB Case #: 201507776	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 09/05/2015 4:10 AM	Location of Incident: 960 Atlantic Avenue	Precinct: 77	18 Mo. SOL 3/5/2017	EO SOL 3/5/2017	
Date/Time CV Reported Mon, 09/14/2015 11:25 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 09/14/2015 11:25 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Jonathan Martinez	10299	953059	088 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ismet Muratovic	30125	954163	077 PCT
2. POM Evan Gales	23302	952756	088 PCT
3. POM Clifford Perch	17833	930929	088 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jonathan Martinez	Force: Police Officer Jonathan Martinez used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On September 14, 2015, § 87(2)(b) filed this complaint with the CCRB via its online website. However, this case was closed on September 18, 2015, because § 87(2)(b)'s lawyer did not want him to give the CCRB a statement while his criminal case was active. This case was reopened by the Board on August 17, 2016, at the request of § 87(2)(b).

On September 6, 2015, at approximately 4:10am, PO Evan Gales and PO Jonathan Martinez, both of the 88th Precinct at the time of this incident, were flagged down front of 960 Atlantic Avenue, in Brooklyn by § 87(2)(b) § 87(2)(b). PO Gales and PO Martinez were informed that § 87(2)(b) struck a pedestrian with his vehicle.

During a brief conversation with § 87(2)(b) on the cement median in front of 960 Atlantic Avenue, PO Martinez and PO Gales smelled an odor of alcohol emanating from § 87(2)(b) and believed him to be intoxicated. While trying to place him under arrest, PO Martinez allegedly punched § 87(2)(b) approximately 3-5 times in the face area. **(Allegation A)**

Shortly after § 87(2)(b) was successfully placed in handcuffs, he was transported to the 78th Precinct stationhouse for "Intoxicated Driver Testing Unit" testing and then subsequently transported to the 77th Precinct for arrest processing. § 87(2)(b) was ultimately charged with § 87(2)(b).

This case was reassigned to the undersigned on September 23, 2016, due to the original investigator's resignation from the agency.

Mediation, Civil and Criminal Histories

- This case was not eligible for Mediation due to § 87(2)(b)'s arrest.
- On November 23, 2016, a request was made to determine if a Notice of Claim was filed in regards to this incident. On November 30, 2016, confirmation from the Office of the New York City Comptroller that § 87(2)(b) filed a notice of claim was received. The details noted in this claim are consistent with the details § 87(2)(b) provided during his CCRB sworn interview, with no exceptions. There is no dollar amount noted on the notice of claim. (Board Review 01)
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first complaint filed by § 87(2)(b) (Board Review 03)
- PO Martinez has been a member of service for 4 years and has been a subject of 13 other CCRB allegations in five other CCRB cases. In CCRB case 201402142 allegations of physical force and retaliatory arrest were closed by the Board as "Unsubstantiated". In case number 201604933 allegations "Abuse of Authority" allegations were closed by the Board as "Unsubstantiated."

Potential Issues

- Despite the undersigned's attempts to get in contact with potential witness, § 87(2)(b) the investigation was unable to obtain a sworn statement from him. § 87(2)(b) was § 87(2)(b) and § 87(2)(b) who stated he saw § 87(2)(b) strike the pedestrian with his vehicle.

Findings and Recommendations

Officer Identification

On September 5, 2016, PO Martinez and PO Gales placed § 87(2)(b) under arrest for striking a pedestrian while driving intoxicated in front of 960 Atlantic Avenue. During this interaction § 87(2)(b) alleged that an officer punched him approximately 3-5 times in the face, and then put him in handcuffs. After he was handcuffed he was placed on a cement median and then transported to the 78th Precinct stationhouse.

According to § 87(2)(b) only one officer was present on scene when he was being handcuffed. § 87(2)(b) described that officer as a Hispanic male, 5'9" skinny build, approximately 30 years old and in plain clothes. § 87(2)(b) also stated that the subject officer had to be either PO Martinez or PO Gales because he received police paperwork with their names on it (Board Review 04).

PO Ishmet Muratovic, of the 77th Precinct, was § 87(2)(b)'s arresting officer. According to his memo book entries on the incident date, PO Martinez and PO Gales were the first officers on scene and observed § 87(2)(b) in the driver's seat of his motor vehicle.

At the time of their interviews, both PO Martinez and PO Gales acknowledged arresting § 87(2)(b). According to the pedigree information sheets these two officers filled out prior to their interviews, PO Martinez is a 6'1" tall Hispanic male, 155 pounds, was § 87(2)(b) old at the time of the incident and was wearing plain clothes at the time of the incident, while PO Gales is a 6'4" tall White male, 255 pounds and was § 87(2)(b) old at the time of the incident. While PO Martinez stated that only he and PO Gales were present when placing § 87(2)(b) in handcuffs, PO Gales testified that an unidentified officer (male black, uniform; did not recall exactly who) he believed to be from the 88th Precinct also assisted in the handcuffing process. (Board Review 05 and 06)

PO Clifford Perch, of the 88th Precinct was identified via the investigation, as the third officer involved in § 87(2)(b)'s handcuffing process because the undersigned looked at the 88th Precinct's Tour 1 Roll Call, identified all of the African American males working, and scheduled each of them for an interview. PO Perch acknowledged assisting PO Martinez and PO Gales in the handcuffing process of § 87(2)(b). According to the pedigree information sheet that he completed at the CCRB, PO Perch is a 5'10" tall black male, 165 pounds, was § 87(2)(b) old at the time of the incident, and was in uniform during the incident. PO Perch stated that the only officers who were involved in handcuffing § 87(2)(b) were himself, PO Gales, and PO Martinez (Board Review 07).

§ 87(2)(g)

Allegation A: Force: Police Officer Jonathan Martinez used physical force against § 87(2)(b)

It is undisputed that PO Martinez was involved in the handcuffing process of § 87(2)(b) § 87(2)(b)

According to § 87(2)(b) while driving eastbound on Atlantic Avenue, in Brooklyn, struck a pedestrian, with his black 2014 Dodge Durango. § 87(2)(b) immediately stopped his vehicle and approached the pedestrian who initially stood up and appeared to be uninjured. However, when bystanders approached the incident, they instructed the pedestrian to get back on the ground and act as if he was injured, which the pedestrian did. Shortly thereafter, § 87(2)(b) observed an officer, the investigation identified as PO Martinez, standing on the cement median in the middle of Atlantic Avenue. The officer told him that he was trying to leave the scene of the accident, but § 87(2)(b) denied it and stated, "I'm on the job." § 87(2)(b)

§ 87(2)(b) testified that PO Martinez asked him, "What job are you on?", and then simultaneously charged at him. § 87(2)(b) alleged that PO Martinez then punched him in the face approximately 3-5 times. § 87(2)(b) raised his arms in an effort to block the punches but never attempted to strike PO Martinez. § 87(2)(b) was then handcuffed by PO Martinez. At this time, PO Martinez was the only officer on scene. PO Martinez handcuffed § 87(2)(b) and sat him on the cement median for a few minutes, when he was then transported to the 78th Precinct stationhouse.

PO Martinez stated that he and PO Gales were flagged down by § 87(2)(b) § 87(2)(b). They were the first officers on scene. § 87(2)(b) told PO Martinez that the driver of the vehicle, confirmed to be § 87(2)(b) hit a pedestrian with his car and was attempting to leave the scene. PO Martinez observed § 87(2)(b) inside of his vehicle PO Martinez and PO Gales approached § 87(2)(b) but did not recall if § 87(2)(b) exited the vehicle himself or was instructed to do so, but at some point § 87(2)(b) was outside of his vehicle. PO Martinez began speaking with § 87(2)(b) about what happened, on the cement median in the middle of Atlantic Avenue, and § 87(2)(b) informed him that the individual he struck was jaywalking and that is why he hit him. § 87(2)(b) seemed angry and irritated that he was stopped and angry at the individual who he struck with his vehicle because he felt that it was the individual's fault.

PO Martinez smelled an odor of alcohol emanating from § 87(2)(b) § 87(2)(b)'s speech was slurred, he was incoherent in that he seemed to be "in and out of it", and he could not stand up straight. § 87(2)(b) had to lean on his car at various times to stand up and when he tried to stand up without assistance he kept swaying back and forth leading PO Martinez to believe that § 87(2)(b) was intoxicated.

PO Martinez and PO Gales attempted to place § 87(2)(b) in handcuffs there was a minimal struggle but could not describe it in detail because he did not recall. PO Martinez stated did not punch § 87(2)(b). He added that since § 87(2)(b)'s resistance was minimal he wouldn't have needed to strike § 87(2)(b). PO Martinez could not describe what § 87(2)(b) was doing to resist because he did not recall. PO Martinez stated the officers did not need to take § 87(2)(b) to the ground in order to place him in handcuffs and that § 87(2)(b) was placed in

handcuffs while standing up against the open driver's side door of his own vehicle. PO Martinez did not recall if any other officers were on scene at this point. PO Martinez did not make any other physical contact with § 87(2)(b) besides attempting to handcuff him and did not see any other officer make any physical contact with § 87(2)(b). PO Martinez did not observe § 87(2)(b) hit his head on anything during the incident, nor did he observe an object hitting § 87(2)(b)'s head.

PO Martinez did not observe any injuries on § 87(2)(b). PO Martinez denied hearing § 87(2)(b) complain about any injuries. PO Martinez was presented with pictures of § 87(2)(b)'s face taken after the incident which appears to show swelling on the left side of § 87(2)(b)'s face. These pictures were allegedly taken by § 87(2)(b) with his cell phone while in the holding cells of the 77th Precinct stationhouse on September 5, 2016. (Board Review 08 and 09) Despite efforts to obtain a Medical Treatment of Prisoner Report, there was no record of one for § 87(2)(b) at the 77th Precinct. After § 87(2)(b) was handcuffed, PO Martinez and PO Gales sat him on the cement median and waited for officers from the 77th Precinct to respond to the location since the aforementioned command was assigned § 87(2)(b)'s arrest.

§ 87(2)(g) PO Gales asked § 87(2)(b) to step out the vehicle so they can speak; PO Martinez "went in" first to handcuff § 87(2)(b) by grabbing § 87(2)(b)'s arms, and when PO Martinez did this § 87(2)(b) stated, "I'm an officer too. Don't touch me, I'll fucking kill you." PO Gales tried to assist by also grabbing § 87(2)(b)'s arms and putting them behind his back. § 87(2)(b) was physically resisting by flailing his arms frantically, pulling his arms away and moving/rocking his whole body back and forth in an attempt to not be handcuffed. Within 30 seconds of struggling with handcuffing process, a third officer, identified via the investigation as PO Perch grabbed § 87(2)(b)'s arms and assisted in the handcuffing process. PO Gales stated that the handcuffing process took nearly two minutes.

PO Perch § 87(2)(g) § 87(2)(g) stated that it took approximately 10-15 seconds when he started to assist to place § 87(2)(b) in cuffs. PO Perch did not punch or strike § 87(2)(b) and didn't recall if he saw PO Gales or PO Martinez do so. When PO Perch was presented with the photos depicting § 87(2)(b)'s alleged injuries from this incident, he stated he did not see those injuries on the incident date, did not do anything that could have resulted in those injuries and did not recall seeing any officer do anything that could have resulted in those injuries. PO Perch was never informed by PO Gales or PO Martinez if any force was used during the handcuffing process prior to his arrival. PO Gales and PO Martinez did not inform him of why they placed § 87(2)(b) in handcuffs.

§ 87(2)(b)'s arresting officer, PO Ishmet Muratovic of the 77th Precinct, testified that when he responded to the scene, § 87(2)(b) was already in handcuffs sitting on the cement median on Atlantic Avenue. PO Muratovic did not recall if the officers informed him if § 87(2)(b) resisted arrest, or if any force was used in the handcuffing process. He did not see PO Martinez, PO Gales, or any officer, punch or strike § 87(2)(b). PO Muratovic never saw any injuries on § 87(2)(b) and did not recall if § 87(2)(b) ever complained of any injuries or pain. When PO Muratovic was presented with two photos of § 87(2)(b)'s injuries PO Muratovic stated he

never saw the injuries on § 87(2)(b) and didn't see any conduct committed by an officer that could have resulted in the injuries (Board Review 08).

The police documentation received during the course of the investigation did not shed any light into the alleged incident. § 87(2)(b)'s arrest photograph did not depict any apparent signs of swelling, bruising or scratches to his face (Board Review 10). Following his arrest, § 87(2)(b) was transported to the 78th Precinct to be administered an Intoxicated Driver Examination Report. The command log entries for this command listed § 87(2)(b) as being intoxicated, but no signs of visible injuries (Board Review 11). As mentioned earlier in this report, the investigation was unable to locate a Medical Treatment of Prisoner Report for § 87(2)(b) in relation to his arrest. The Intoxicated Driver Testing Unit report noted § 87(2)(b)'s level of intoxication as .067% blood alcohol level four hours after he was arrested. It should be that in New York State a person with a Blood alcohol Content above 0.08% is considered to be intoxicated.

On § 87(2)(b), § 87(2)(b) visited a § 87(2)(b) in Brooklyn. He informed the staff at this facility that he was punched in the left side of his face by a police officer while being arrested and experienced left eye and face pain. The records revealed that § 87(2)(b) had swelling and tenderness to the upper left cheek area (See Medical Records).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Squad: 15

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date

